

COPY

ORDINANCE 2018- 07

**AN ORDINANCE OF THE BOARD OF COMMISSIONERS
OF WARRICK COUNTY, INDIANA, ADOPTING A
NEW CHAPTER REGARDING PUBLIC NUISANCES**

WHEREAS, pursuant to Indiana Code § 36-7-10.1-3, Warrick County may by ordinance require the owners of real property located within the unincorporated areas of Warrick County to cut and remove weeds and other rank vegetation; and

WHEREAS, pursuant to Indiana Code § 36-7-10.1-3, Warrick County may exempt from the definition of weeds and rank vegetation areas of cultivated agricultural crops, including hay and pasture; and

WHEREAS, pursuant to Indiana Code § 36-8-2-4, Warrick County may by ordinance regulate conduct and the use or possession of property that might endanger the public health, safety or welfare; and

WHEREAS, the Board of Commissioners of Warrick County, Indiana, desires to add a new chapter to the Warrick County Code of Ordinances regulating weeds and rank vegetation and the conduct and use or possession of property that endangers the public health, safety or welfare; and

WHEREAS, it is the policy of the State of Indiana and Warrick County that certain agricultural operations do not constitute nuisances and therefore are exempted from this chapter and hereinafter set out.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Warrick County, Indiana, that Chapter 157 is heretofore added to the Warrick County Code of Ordinances as follows:

CHAPTER 157: PUBLIC NUISANCES

§ 157.01 PURPOSE AND INTENT.

It is hereby declared to be the purpose of this Chapter to regulate and control the growth and require the cutting and removal of weeds and other rank vegetation on all parcels of real estate on residential and commercial properties in the unincorporated areas of Warrick County not otherwise exempted herein. It is further declared that the purpose of this Chapter is to protect the public health, safety and welfare, and enhance the environment for the people of Warrick County by making it unlawful for residential and commercial property owners and occupants to allow a public nuisance as defined in Indiana Code § 32-30-6-6 to exist on any real property located within Warrick County.

§ 157.02 DEFINITIONS.

As used in this Chapter, the following terms shall have the following meanings unless otherwise designated.

ABANDONED VEHICLES shall have the same meaning as I.C. 9-13-2-1 as any motor vehicle that is at least three (3) model years old, is mechanically inoperable, and is left on private property continuously in a location visible from public property for more than twenty (20) days. Abandoned Vehicles does not include farm equipment, farm implements, or machinery parts that are, or may be, used in agricultural operations, or may be considered antique farming implements.

GARBAGE shall include putrescible animal and vegetable wastes, resulting from the handling, preparation, cooking and consumption of food, and any Refuse, Rubbish, and Yard Waste as defined herein.

HEARING AUTHORITY shall mean the Board of Commissioners, a Highway Department Supervisor, or other employee of Warrick County as specifically designated by the Board of Commissioners of Warrick County in their discretion.

JUNK shall include, without limitation, Abandoned Vehicles, parts of vehicles, scrap iron and/or other metals, wood, paper, rags, rubber tires, bottles, and/or any dismantled household appliances or parts thereof, whether inoperable or operable.

OWNER shall mean a person holding legal or equitable title to real property used for residential or commercial purposes within the unincorporated limits of Warrick County, Indiana.

PERSON shall mean an individual, partnership, limited liability company, corporation, trust or any commercial association or venture, however defined.

PUTRESCIBLE shall mean substances which are subject to organic decomposition.

REFUSE shall mean all putrescible and nonputrescible solid wastes, including animal wastes, and ashes.

RUBBISH shall mean nonputrescible solid wastes consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, wood, glass, bedding, crockery, construction debris, and similar materials.

WEEDS and **RANK VEGETATION** shall include any excessive growth of vegetation, other than trees, bushes, shrubs, ornamental plants, that is nine (9) inches or more in height and/or listed as a weed in the U.S. Department of Agriculture publication entitled *Common Weeds of the United States*, or in any similar government publication. This term does not include

agricultural crops, including hay and pasture, which are maintained for that purpose in areas crops are permitted to be grown.

YARD WASTE shall mean severed grass, Weeds, leaves, brush, tree trimmings, hedge clipping and other yard and garden materials.

§ 157.03 WEEDS, RANK VEGETATION, GARBAGE AND JUNK PROHIBITED.

(A) *Weeds, Rank Vegetation, Garbage and Junk Declared Public Nuisances.*

Weeds, Rank Vegetation, Garbage and Junk as herein defined that constitute violations of this Chapter are declared to be public nuisances due to the danger to the public health, safety and welfare of the citizens of Warrick County.

(B) *Violation.*

It is a violation of this Chapter for an Owner to allow Weeds, Rank Vegetation, Garbage and/or Junk to accumulate on real property located within Warrick County used for residential or commercial purposes, thereby creating a public nuisance affecting a neighborhood or community as may be determined by the Hearing Authority.

(C) *Prevention of Public Nuisances.*

All Owners shall cut and remove Weeds and Rank Vegetation and shall keep their real property clear of Garbage and Junk.

(D) *Violation Report and Violation Notice.*

All alleged violations of this Chapter shall be subject to the following:

(i) Violation Reports. Violations of this Chapter shall be reported on forms to be provided by and submitted to the Administrator of the Warrick County Commissioners ("Violation Report"). A Violation Report may be submitted by any resident of Warrick County in the same neighborhood or community of the alleged nuisance.

(ii) Inspections. Following the submission of two (2) or more Violation Reports by neighbors or community members that allege a violation of this Chapter, the County Commissioner in whose district the alleged violation is located, or his/her designee, shall inspect the real property that is the subject of Violation Reports and file an inspection report with the Administrator of the County Commissioners which shall include the following determinations:

- a) whether the Owner has violated this Chapter;
- b) if any of the Violation Reports were filed for purposes other than to report a violation under this Chapter; and

- c) if the Violation Reports were submitted by neighbors or community members.

(iii) Violation Notices. Upon determination that the Owner has committed a violation of this Chapter, the Hearing Authority, or its designee, shall issue a written notice ("Violation Notice") to the Owner and any occupants of the property. The Violation Notice shall identify the violation(s) and order the Owner to mitigate the public nuisance within ten (10) business days from the date on which the Owner has been served the Violation Notice ("Abatement Period"). Personal service, service by U.S. certified mail, or any other manner of service recognized in the Indiana Rules of Trial Procedure shall constitute proper service upon the Owner and any occupants of the property for the purposes of this Chapter. Additionally, a copy of the Violation Notice shall be conspicuously posted on the property by the Hearing Authority, or its designee.

(iv) In the event the Violation Reports as confirmed by the Inspection of the County Commissioner or his/her designee identify one (1) or more Abandoned Vehicles on the subject property, the County shall comply with all due process requirements for notice and abatements of those Abandoned Vehicles as specified under Indiana law including IC § 9-22-1, *et. seq.*

(E) *Violation Notice Appeal.*

Any Violation Notice issued pursuant to this Chapter may be appealed to the Hearing Authority if written notice of appeal is served on the Hearing Authority by the Owner prior to the expiration of the Abatement Period. The timely appeal of a Violation Notice shall toll the Abatement Period pending the issuance of a decision thereon by the Hearing Authority.

(F) *Abatement of Public Nuisance.*

If the Owner fails to timely abate each violation set forth in a Violation Notice within the Abatement Period, the Hearing Authority may authorize the County Attorney to file an action for an ordinance violation in the Warrick County Superior or Circuit Courts seeking an order of abatement of said nuisance. Said order of abatement shall grant the County or its designees permission to abate the public nuisance, including the cutting or removal of Weeds and/or Rank Vegetation and the removal of Garbage and/or Junk identified in the Violation Notice. Upon completion of the abatement, the Hearing Authority, or its designee, shall prepare a certified statement as to the actual administrative and other costs incurred by Warrick County in taking such action in addition to any penalties provided herein ("Abatement Costs"), and shall serve a copy of the invoice on the Owner. The Owner shall, within ten (10) calendar days from the date on which the Owner is served with such invoice ("Payment Period"), pay in full the amount stated thereon payable to the Warrick County Board of Commissioners.

(G) *Appeal of Costs.*

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Any invoice for Abatement Costs issued pursuant to this Chapter may be appealed to the Hearing Authority if written notice of appeal is served by the Owner on the Hearing Authority within ten (10) calendar days from the date on which the invoice is served on the Owner. The timely appeal of an invoice shall toll the Payment Period pending the issuance of a decision thereon by the Hearing Authority.

(H) *Failure to Pay.*

If the Owner fails to timely pay an invoice for Abatement Costs issued pursuant to this Chapter, the Hearing Authority, or his designee, shall certify to the Warrick County Auditor the amount of the invoice for Abatement Costs, plus any additional administrative costs incurred in the certification of the same. The Warrick County Auditor shall place the total amount so certified on the tax duplicate for the property at issue, and the total amount, including any accrued interest, shall be due and payable with the parcel's real estate tax bill.

(I) *Time of Appeals.*

The Hearing Authority shall hear any timely requested appeal of Notice of Violation or invoice for Abatement Costs within thirty (30) calendar days following receipt of the same, and shall thereafter promptly issue a decision granting or denying, in whole or in part, the appeal. The date on which the Hearing Authority's decision is served on the Owner shall thereafter become the first calendar day of the Abatement Period or Payment Period, as applicable.

(J) *Miscellaneous.*

(i) *Venue.* The Warrick County Superior or Circuit Court shall be the court of proper venue and jurisdiction for the enforcement of this Chapter.

(ii) *Cumulative Remedy.* This Chapter supplements and does not limit any other remedy or action available in law or equity regarding the subject matter hereof.

(iii) *Applicability.* This Chapter shall not apply to the following:

- (a) Agricultural and industrial operations as described in IC § 32-30-6-9.
- (b) Forestry operations as described in IC § 32-30-6-11.
- (c) Real property upon which agricultural crops are cultivated, including hay and pasture, as described in IC § 36-7-10.1-3(a).
- (d) Warrick County municipal corporations as defined in IC § 36-1-2-10, and Warrick County governmental units, departments, and school corporations.

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(iv) *Abatement Vendors.* The Board of County Commissioners may invite and accept no less than two (2) reasonable bids for abatement vendors who shall be private businesses and not any department of the County. Said vendors shall provide abatement services as independent contractors for violations of this Chapter including the abatement of Weeds and Rank Vegetation, Garbage and Junk, and the bids may be renewed and updated at various times when deemed appropriate by the Board of Commissioners.

(v) *Public Nuisance Fund.* Any and all Abatement Costs, fees, penalties and fines collected pursuant to this Chapter shall be deposited into a Public Nuisance Fund or other Fund as determined by the County fiscal body for the express purpose to cover the costs of administration of the enforcement of this Chapter.

(K) *Penalty.*

Any Person who violates a provision of this Chapter shall incur a penalty which shall be part of the Abatement Costs and which may include the following at the discretion of the Hearing Authority:

(i) The actual administrative costs incurred by Warrick County, or its designee, in issuing the Violation Notice; and

(ii) The actual filing fees incurred in filing the ordinance violation in Court and attorney fees of up to Two Hundred Fifty Dollars (\$250.00).

(iii) The actual administrative and other costs incurred by the Warrick County in abating a public nuisance; and

(iv) The actual administrative costs of Warrick County certifying the Abatement Costs to the County Auditor; and

(v) A fine, as follows:

(a) First violation – One Hundred Dollars (\$100.00).

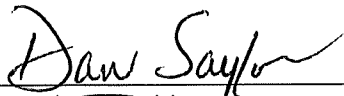
(b) Second violation – Five Hundred Dollars (\$500.00).

(c) Third and subsequent violations – One Thousand Dollars (\$1,000.00).

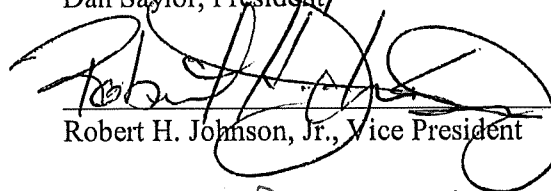
(L) *Effective Date.* This chapter shall be effective June 1, 2018.

The above ordinance is passed and adopted by the Warrick County Board of Commissioners this 23rd day of April, 2018.

WARRICK COUNTY
BOARD OF COMMISSIONERS



Dan Saylor, President

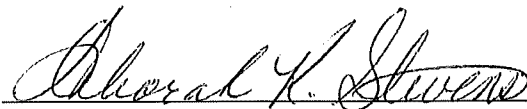


Robert H. Johnson, Jr., Vice President



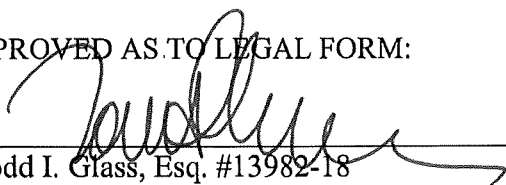
Marlin Weisheit, Member

ATTEST:



Deborah K. Stevens, Auditor
Warrick County, Indiana

APPROVED AS TO LEGAL FORM:



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